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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[TD ATF-399; Re: Notice No. 853]

RIN 1512-AA07

Diablo Grande Viticultural Area (97-104)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF) Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision establishes a viticultural area located

in the western foothills of Stanislaus County, California, to be known as ``Diablo Grande" under 27 CFR part 9. The viticultural area occupies over 45 square miles, or approximately 30,000 acres. This viticultural area is the result of a petition submitted by Dr. Vincent E. Petrucci, Sc.D., on behalf of the Diablo Grande Limited Partnership, the principal property owner within the viticultural area and developers of the Diablo Grande Resort Community.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: David W. Brokaw, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927-8199.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new part 9 to 27 CFR, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), title 27, CFR, defines an American

viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

Dr. Vincent E. Petrucci, Sc.D., petitioned ATF on behalf of the Diablo Grande Limited Partnership, for the establishment of a new viticultural area located in the western foothills of Stanislaus County, California, to be known as ``Diablo Grande." The Diablo Grande Limited Partnership is the principal property owner within the proposed

viticultural area and the developer of the Diablo Grande Resort Community. The viticultural area occupies over 45 square miles, or approximately 30,000 acres. Currently there are 35 acres of grapes planted with an additional 17 acres planned for 1997. The petitioner claims that the area can accommodate an additional 2700 acres of future grape plantings.

Comments

A Notice of Proposed Rulemaking, Notice No. 853 (62 FR 34027) was published in the Federal Register on June 24, 1997, requesting comments from all interested persons concerning the proposed ``Diablo Grande'' viticultural area. No comments were received in response to this notice.

Evidence That the Name of the Area Is Locally or Nationally Known

``Diablo Grande,'' is the name of the destination resort and residential community that occupies the viticultural area. The petitioner stated that this name was given to the area because of its proximity to Mount Diablo, the highest peak of the Pacific Coast mountain range. Mount Diablo is located 38-40 miles due north of the proposed area. The petitioner emphasized the fact that the proposed area lies in the Diablo Mountain Range, which extends from Mount Diablo State Park in Contra Costa County to the south of and beyond the proposed ``Diablo Grande'' viticultural area located in Stanislaus County. There is evidence that the name, ``Diablo Grande,'' has become associated with the area by both the residents of California, and

perhaps the nation, as a result of the development of the destination resort and residential community. The resort community has been in existence since the early 1990s. As evidence that the area is known as ``Diablo Grande," the petitioner submitted copies of 21 newspaper articles that discuss the development of the resort. With the exception of the Golf Course Report, Alexandria, Virginia, all of the articles are from local California newspapers.

There is also evidence that the area occupied by the resort was historically known as the ``Oak Flats Valley." A working ranch, known as the Oak Flats Valley Ranch once occupied this land. Many of the newspaper articles submitted by the petitioner refer to the area as the ``Oak Flats Valley Ranch" or the ``Oak Flats Valley." No evidence was provided that the area was tied to Mount Diablo prior to the development of the resort. Accordingly, ATF solicited comments in Notice No. 853 on whether the use of the name ``Diablo Grande" was proper for this area. No comments were received on this issue. Consequently, based on the evidence submitted by the petitioner, ATF believes the name ``Diablo Grande" is now associated with the area.

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Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

As evidence that the boundaries of the viticultural area are as specified in the petition, the petitioner submitted a map titled, ``Stanislaus County Vicinity Map" drawn by Thompson-Hysell Engineers. A more detailed map entitled ``Concept Plan Diablo Grande," prepared

by T.R.G. Land Resources, Inc., was also submitted. In addition, the petitioner submitted a newspaper article from The Modesto Bee dated June 28, 1993, showing the boundary area (map) in respect to Interstate Highway 5, the city of Patterson, the City of Newman, and the Santa Clara County line. The border for ``Diablo Grande" is illustrated on the ``Stanislaus County Vicinity Map" and the maps in the newspaper article giving the location within Stanislaus County, California. The Modesto Bee article describes the site as being located about five miles west of Interstate 5 and seven miles southwest of Patterson consisting of gently sloping hills to steep ridges in the Diablo Range, an eastern arm of the Coast Ranges. The article further describes the site as encompassing portions of three major watersheds--Orestimba, Crow, and Salado Creeks.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features of the Area From Surrounding Areas

Climate

The petitioner provided a table of heat summation in degree days illustrating the contrast in temperature between the viticultural area and areas immediately outside the viticultural area. The data was taken from four separate weather stations located in Newman (10 miles east), Westley (10 miles north), Tracy (25 miles north) and Modesto (30 miles northeast). The petitioner chose these areas because they were the closest areas with climate records. According to the table, the ``Diablo Grande" viticultural area is 384 degree days warmer than

Modesto, 191 degree days cooler than Newman, 243 degree days cooler than Tracy, and 1022 degree days cooler than Westley.

The petitioner submitted a four year record of rainfall spanning from 1992 to 1995 for the viticultural area. The petitioner also provided a table illustrating the contrast in monthly and annual rainfall in inches between the ``Diablo Grande" viticultural area and areas immediately outside of the viticultural area. The rainfall data shows that the ``Diablo Grande" viticultural area has an annual rainfall 13.8% to 22.6% higher than the other four areas (Newman, Westley, Modesto, and Tracy). The higher rainfall in the viticultural area is due to its higher elevation (800 to 2600 feet) as compared to the other four areas which range in elevation from 40 to 300 feet. Rainfall generally occurs during the winter in all five areas, with little or no rainfall during the summer months.

Due to its elevation and the protective mountains, the viticultural area lies above the fog belt in contrast with areas immediately outside of the viticultural area. In the Newman, Patterson, and Westley areas, fog is a common occurrence throughout the rainy season in all but the foothill regions.

The predominant wind directions are from northeast to northwest in the ``Diablo Grande" viticultural area due to the orientation of the many mini-valleys encompassing the area and the wind deflection caused by the hills surrounding these mini-valleys. This is a unique feature of the viticultural area's micro-climate as contrasted with the Newman/ Westley areas where the reverse is true with the predominant winds coming from the northwest, typical of the flat lands outside of the viticultural area's perimeter.

Soils

The soil characteristics of the ``Diablo Grande" viticultural area are not only different and distinct from those of the lower foothills and Central Valley to the east and north, but they are also different from other areas of the Diablo Range to the south and west of the viticultural area.

The petitioner provided a general description of the soils in the form of a report entitled, ``Diablo Grande Specific Plan Draft Environmental Impact Report" prepared by LSA Associates, Inc., Pt. Richmond, California for the Stanislaus County Department of Planning and Community Development. The petitioner also submitted a report from the Soil Conservation Service which recently mapped soils within the viticultural area and identified 16 major soil types.

Extensive soil sampling and detailed analysis (both physical and chemical) have been conducted at two different locations within the viticultural area. In December of 1989, thirteen samples were taken at various sites in the vicinity of the Oak Flat Ranch. In May of 1996, fourteen samples from Isom Ranch were collected and analyzed. A copy of this analysis was included with the petition.

These reports show that a majority of the soils found in the ``Diablo Grande" viticultural area are composed of the following series listed in approximate order of occurrence: Arburua loam, Wisflat sandy loam, Contra Costa clay loam, and San Timoteo sandy loam, with lesser amounts of Zacharias clay loam and gravelly clay loam. Most of the soils are complexes made up of two or more of these series as well as occasional rock outcrops of exposed sandstone and shale. In these complexes, the soil series are so intimately intermixed that it is not

practical to separate them geographically.

The reports show that the soils within the viticultural area typically have slopes ranging from 30% to 75% and elevations from 400 to 2700 feet. An exception is the relatively minor Zacharias series which has slopes of 2% to 5% and elevations of 200 to 400 feet. The soils in the viticultural area are derived from sandstone and vary from shallow to very deep with most of the complexes showing moderate depth. The soils are well-drained to somewhat excessively-drained. Permeability varies from slow to moderately rapid, surface run-off rates are rapid and, according to the petitioner, the potential for water erosion can be severe. The petitioner provided a table giving a complete description of the characteristics for each soil type.

In contrast to the soils of the viticultural area, the soils of the surrounding areas are largely composed of different soil series with different characteristics, including elevations and slopes. The petitioner provided an exhibit defining the various soil series and soil types, and an exhibit with aerial photographic maps showing soil type location by map numbers.

While most of the soil series which are found within the "Diablo Grande" viticultural area can also be found in the nearby surrounding areas, these series represent very small portions of the total in those surrounding areas. Additionally, many of the soil series which make up the major soil types of the surrounding areas are not found at all within the viticultural area. These soil types include Capay clay, Vernalis clay loam, Stomar clay loam, Chaqua clay loam, Calla clay loam, Carbona clay, Alo clay, Vaquero clay, El Salado loam and fine sandy loam. These series are found to the east and north of the viticultural area. Most of these series have slopes of 0% to 2% and

elevations of 25 to 400 feet with four of these series having slopes up to 8%, 15%, 30%, and 50% respectively and elevations from 300 to 1600 feet.

There is another major difference between the ``Diablo Grande"

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viticultural area soils and most of those to the east and north. The ``Diablo Grande" soils are residual soils formed from sedimentary deposits of sandstone and calcareous sandstone while most of the surrounding soils are from alluvial deposits of mixed rock parent material having lower slopes and elevations.

The area surrounding the ``Diablo Grande" viticultural area to the west and south includes the Orestimba Creek Canyon beyond which lies a more rugged portion of the Diablo Range. Much of the land directly west of the viticultural area is part of the Henry W. Coe State Park and although this area includes some of the same soil series as the ``Diablo Grande" viticultural area, there are also many new series including Gonzaga clay, Honker clay, Franciscan clay loam, Vellecitos clay, Gaviota gravelly loam, Henneke clay, Hentine loam, and Hytop clay. These soils generally have slopes of 30% to 75% and elevations of 700 to 3300 feet.

Topography

The geography of the viticultural area sets it apart from the surrounding areas in several respects. Three main water courses traverse the area: Salado Creek, Crow Creek, and Orestimba Creek.

Salado and Crow Creek traverse the area from the vicinity of Mikes Peak along the western boundary of the viticultural area, northeast and east respectively, toward Interstate 5. Orestimba Creek traverses the southwestern and southern boundary line as it flows eastward.

Current vineyard plantings are at elevations ranging from 1000 feet mean sea level (msl) near the vineyard located in the vicinity of the Oak Flat Ranch to 1800 feet msl at the Isom Ranch. These vineyard site elevations are the highest elevations where grapes are grown in Stanislaus County. This contrasts with other Stanislaus County vineyards outside the ``Diablo Grande" viticultural area where grapes are grown at elevations ranging from 70 to 90 feet at Modesto to 300 to 340 feet at the base of the foothills near Patterson where a newly planted vineyard (1996) of 90 acres exists approximately 4.2 miles east of the viticultural area boundary. The petitioner distinguishes this vineyard site from the ``Diablo Grande" viticultural area by noting that the Patterson site is 340 feet lower and has a soil type which is all Vernalis-Zacharias complex with 0% to 2% slopes. These conditions do not exist in the ``Diablo Grande" viticultural area.

The topographic features of the viticultural area include many ``mini-valleys" as a result of its mountainous structure. This provides several attributes not found in the vineyards planted on the flat lands in the interior of Stanislaus County. Grapes grown on the terraced hillsides of the viticultural area are subject to a mesoclimate (or topoclimate or site climate) which can vary from the general macroclimate due to differences mainly in elevation and slope. Thus, site selection becomes an important feature when working with this type of topography as contrasted to the flat lands of 1% to 2% slopes. There is the opportunity to grow grapes on slopes (15%-30%)

that have western, eastern, southern, or northern exposure or any combination of all four slope exposures.

The petitioner provided a diagram purporting to show how mesoclimates are influenced by sloping contour topography. The southern and western slopes receive a greater exposure to sunshine and, therefore, accumulate more heat units than the northern or eastern slopes. It is this difference in sunshine and heat that makes the viticultural area's mesoclimate. According to the petitioner, grapes grown on all four slope exposures, when harvested together and crushed as one lot, make wines that differ considerably from grapes grown on the lower elevation flat lands. The petitioner claims that this is the key factor which makes the viticultural area wines distinct from those of the surrounding area. In support of this claim the petitioner provided several letters from staff members at the Viticulture and Enology Research Center, California State University, Fresno and winemakers. These letters indicate that wines made from grapes grown in the ``Diablo Grande" viticultural area exhibit characteristics distinctive enough to deserve consideration for a specific appellation. ATF has concluded that there is sufficient evidence to establish the ``Diablo Grande," area as a distinct viticultural area under 27 CFR part 9.

Geographic Brand Names

A brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements for the geographic area named. See 27 CFR 4.39(i). Consequently, establishment of this viticultural area would preclude the use of the term ``Diablo

Grande" as a brand name for a wine, unless the wine can claim ``Diablo Grande" as an appellation of origin, or complies with one of the exceptions in the regulation.

Boundaries

The boundary of the ``Diablo Grande" viticultural area may be found on four United States Geological Survey Quadrangle 7.5 minute series (Topographic) maps, entitled Patterson Quadrangle, California--Stanislaus Co., Copper Mtn. Quadrangle, California--Stanislaus Co., Wilcox Ridge, California--Stanislaus Co., and Orestimba Peak, California--Stanislaus Co.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows

wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is David W. Brokaw, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

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PART 9--AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C--Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding Sec. 9.156 to read as follows:

Sec. 9.156 Diablo Grande.

(a) Name. The name of the viticultural area described in this section is ``Diablo Grande".

(b) Approved maps. The appropriate maps for determining the boundary of the Diablo Grande viticultural area are the following four U.S.G.S. Quadrangle 7.5 Minute Series (Topographic) maps. They are titled:

(1) Patterson Quadrangle, California--Stanislaus Co., 1953 (Photorevised 1971, Photoinspected 1978);

(2) Copper Mtn. Quadrangle, California--Stanislaus Co., 1953 (Field Check 1956, Aerial Photo 1971);

(3) Wilcox Ridge, California--Stanislaus Co., 1956 (Photorevised 1971);

(4) Orestimba Peak, California--Stanislaus Co., 1955 (Photorevised 1971).

(c) Boundary. The Diablo Grande viticultural area is located in the western foothills of Stanislaus County, California. The beginning point is at Reservoir Spillway 780 in section 8, Township 6 South, Range 7 East (T. 6S., R. 7E.) on the Patterson Quadrangle U.S.G.S. map.

(1) Then proceed northwest to Salt Grass Springs to the point where the 1000 foot contour line crosses the northern section line of section 9, T. 6S., R. 6E., on the Copper Mtn., Quadrangle U.S.G.S. map.

(2) Then proceed due south past Copper Mountain in section 16, T. 6S., R. 6E., to Mikes Peak in section 4, T. 7S., R. 6E., on the Wilcox Ridge Quadrangle U.S.G.S. map.

(3) Then proceed due west to Orestimba Creek in section 6, T. 7S., R. 6E.

(4) Then proceed following Orestimba Creek south/southeast and then east/northeast to the point where Orestimba Creek meets Bench Mark #340 in section 28, T. 7S., R. 7E., on the Orestimba Peak Quadrangle U.S.G.S. map.

(5) Then proceed northwest to the point of beginning at Reservoir Spillway 780 in section 8, T. 6S., R. 7E.

Signed: May 11, 1998.

John W. Magaw,
Director.

Approved: May 29, 1998.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 98-16502 Filed 6-19-98; 8:45 am]

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